



DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA

November 18, 2004

DIVISION OF
LAND RESOURCE
PROTECTION

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Ms. Mary Miller
Department of Water Resources
Southern District
770 Fairmont Ave., Ste 102
Glendale, CA 91203-1035

Subject: SCH 2004061133 – Draft Environmental Impact Report (DEIR)
for the Tehachapi East Afterbay Project, Kern County.

Dear Ms. Miller:

The Department of Conservation's Division of Land Resource Protection (Division) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act, California Farmland Conservancy Program, and other agricultural land conservation programs.

The California Department of Water Resources (CDWR) proposes to construct a new afterbay facility as an extension of the existing Tehachapi Afterbay. The additional storage provided by the East Afterbay would allow downstream facilities on the East Branch, and to a less extent, the West Branch of the California Aqueduct to continue operations for short periods without relying on the pumping operations of the Valley String Pumping Plants. The DEIR states that the proposed project would not result in Delta diversions or increased deliveries to the State Water Project contractors or substantially affect the timing of water deliveries.

The Division staff have reviewed the document cited and described above, and offer the following comments:

A negative declaration was prepared for a mitigation land acquisition for the Tehachapi East Afterbay Project. Although the acquisition of mitigation lands is an intrinsic part of the Tehachapi East Afterbay project, we will defer to the lead agency's decision to segment the project.

Project Acreage

The DEIR indicates that existing land uses include ranching grazing and resource extraction. The project location is within the boundaries of the Tejon Ranch in Kern County. The total acreage of land to be acquired for the proposed project would be approximately 500 acres. The land is zoned Exclusive Agriculture and is currently under Williamson Act contract. The project site, the spoil area and supplemental spoil area are classified as grazing lands. The project would permanently convert 198.5 acres and up to 215.5 acres for the spoil area. Section 5 of the document indicates that there would not be a substantial loss of agricultural resources as the site is used for grazing and is not cultivated, however, the acreage that would actually be converted is unclear. Is the acquisition of mitigation lands included in the 500 acres, or is the 239 acres for mitigation in addition to the proposed acquisition? It is unclear whether the entire project – that includes acreage for mitigation - encompasses 500 acres or 739 acres.

9a

Mitigation Land Acquisition for Loss of Habitat

As indicated above, a negative declaration was prepared separately for the Mitigation Land Acquisition for the Tehachapi East Afterbay project. On November 5, 2004, CDWR representatives met with Division staff to clarify some issues pertaining to a 239-acre acquisition that is to be designated for mitigation purposes. The information provided by CDWR indicates that the land is not prime agricultural land for both projects and was not productive nonprime agricultural land. A general conservation easement is proposed, and we find that establishment of conservation easements that include preservation of open space is not inconsistent with the Williamson Act in this instance.

9b

Impact Analysis

The DEIR currently indicates that there would be a less than significant impact to agricultural resources, which appears to be somewhat inconsistent with the outcome of the meeting, as the discussion pertained to mitigation to impacts. CDWR intends to acquire Williamson Act contracted lands to mitigate impacts to Biological Resources (that exist on the agricultural land that is to be acquired). We respectfully ask that the DEIR's impact analysis be revisited, and that impacts to agricultural resources reflect the outcome of the November 5 meeting. We suggest that CDWR include Williamson Act Findings for the removal of land under contract for public work needs and related impacts in the FEIR, as well as address the findings pursuant to Government Code section 51292 in an addendum to its notice of public acquisition dated October 4, 2004.

9c

The DEIR indicates that the Centennial project, also proposed on the Tejon Ranch property would significantly affect agricultural resources, as it would be growth inducing, but states that the proposed project would not be growth-inducing. We ask that a clear explanation be of how a project that would provide flexibility in water delivery would not be growth-inducing, and result in additional conversion of agricultural lands to other uses.

9d

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Additional Requirements

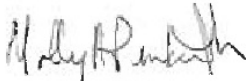
We respectfully request that CDWR provide the following information:

- Describe its process of acquisition by eminent domain or in lieu of eminent domain and the steps involved pursuant to Government Code section 51295 in notice of public acquisition of Williamson Act contracted lands, including the notice dated October 4, 2004.
- Include and address the findings pursuant to the Williamson Act (Government Code section 51292) for the removal of land under contract for public work needs in the DEIR.

9e

Thank you for the opportunity to review this DEIR. Please contact Jeannie Blakeslee at (916) 323-4943, or Robert Blanford at (916) 327-2145 if you have any questions regarding these comments.

Sincerely,



Dennis J. O'Bryant
Acting Assistant Director

cc: State Clearinghouse

State of California Department of Conservation

November 18, 2004

- 9a** The CDWR would purchase approximately 340 acres for the proposed Tehachapi East Afterbay Project. This would include approximately 71 acres for the reservoir, 26.5 acres for the inlet/outlet structures, 13 acres for the drainage berm spoil pile, 75 acres for the spoil pile, up to 17 acres for the supplemental spoil area, as well as additional acreage for construction laydown and operations to be located between the CDWR facilities and surrounding Tejon Ranch property, which is planned for future development. As part of the land to be acquired specifically for the proposed project, 311.82 acres would be removed from Williamson Act contract. The CDWR would also purchase 232 acres of land to offset the permanent commitment of land that would be occupied by the proposed East Afterbay and associated improvements. A Negative Declaration was prepared by the CDWR in September 2004 specifically for the land to offset the permanent impacts associated with the Tehachapi East Afterbay Project, as requested by Tejon Ranch (seller).
- 9b** The actions being taken by the CDWR to acquire the subject lands are consistent with the Williamson Act. The Williamson Act (Government Code Section 51291) permits the acquisition of contract land for a public improvement, which is the case for the proposed project (please see the response to Comment 9c below). The proposed conservation easement would be established for the purpose of preserving wildlife habitat and open space, but would not specifically preserve agricultural uses.
- 9c** Section 5.5.3 of the Draft EIR has been updated to include additional discussion of Williamson Act contract land and the removal of such lands for public work needs. Below are the updates provided in the Final EIR. Additions are shown in bold and underlined, deletions are shown as strike-out text.

Some of the lands proposed for acquisition for the proposed project are currently under a Williamson Act contract, ~~which is a contract between governments and private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use.~~ **The California Land Conservation Act of 1965, which is commonly referred to as the Williamson Act, was designed to preserve agricultural lands and open space. Under the Williamson Act, local governments enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use.** In exchange, landowners receive reduced property tax assessments, which are much lower than normal, as they are based upon farming and open space uses as opposed to full market value. The Williamson Act (Government Code Section 51291) includes provisions for an agency to notify the Director of the Department of Conservation of the possible acquisition of land enrolled in a Williamson Act contract for a public improvement. **The local governing body responsible for the administration of the agricultural preserve (in this case, Kern County) must also be notified. Acquisition of the land would not require findings as stipulated in Government Code section 51292 because of an exception for State Water Facilities discussed in Government Code section 51293(h).**

Furthermore, Section 51295 of the Government Code states in part “when that land is acquired in lieu of eminent domain for a public improvement by a public agency or

person...the contract shall be deemed null and void as to the land actually being condemned, or so acquired as of the date the action is filed.” Section 51295 further states, in part, that “If, after acquisition, the acquiring public agency determines that it will not for any reason actually locate on that land or any part thereof, the public improvement for which the land was acquired, before returning the land to private ownership, the public agency shall give written notice to the Director of Conservation and the local governing body responsible for the administration of the preserve.” Because the Williamson Act allows acquisition of contract land for public improvements (subject to the notification procedure described above), the acquisition of such land for the proposed project would not conflict with the Williamson Act contract.

The Williamson Act contract, which covers portions of the proposed project site, was established in February 1968 between Kern County and the Tejon Ranch Company (Tejon 2004). The existing conservation contract originally included ~~2,866.58~~ 2,866.58 acres in Kern County (Agricultural Preserve number 19) (CDWR 2004c). The total acreage currently remaining under contract is 1,458.74 acres (CDWR 2004I). ~~of which the proposed project would permanently affect up to 198.5, and potentially more if the supplemental spoil area were to be used.~~ Of the approximately 340 acres the CDWR would purchase specifically for the proposed project, 311.82 acres would be removed from the existing Williamson Act contract (CDWR 2004I).

According to the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP), the land impacted by the proposed project is classified as Grazing Land, and is neither Prime Farmland nor a Farmland of Statewide Importance (CDOC 2004). The proposed project would convert approximately 340 acres zoned for agricultural use to a non-agricultural use, but this conversion would not represent a substantial loss because the land has not been recently cultivated as Farmland and the acreage involved would be negligible. Therefore, the proposed project would not constitute a significant impact to agriculture resources. ~~The Williamson Act allows acquisition of contract land for public improvements (subject to notification) and the acquisition of such land for the proposed project would not conflict with the Act.~~

- 9d As discussed in Section 5.1 of the Draft EIR, the Tehachapi East Afterbay Project would not, directly or indirectly, facilitate increased water deliveries to State Water Project contractors. The proposed project would provide additional storage based on existing design pumping rates to continue water deliveries for short periods when the Edmonston Pumping Plant is not operating or is operating at reduced capacity. It would not increase pumping rates or service capacity, as the East Afterbay has been designed based on the existing design pumping rates. Therefore, the proposed project would not induce growth because it would not increase water supplies nor increase capacity for making water deliveries via the State Water Project. This is consistent with the stated intention of the Williamson Act, which is to protect agricultural land from urban development.

While the proposed project would include the construction of new infrastructure for the California Aqueduct, it would not be associated with nor would it induce population growth. Growth is determined through local processes (i.e., planning, entitlements, policies, etc.) and is not determined by the CDWR.

- 9e** The CDWR will consider providing the requested information in future noticing. Findings were addressed previously (see Comment 9c).